

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
L-03 NSAE-00 PA-01 SP-02 SS-15 NSCE-00 SSO-00
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O R 191711Z MAY 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 8708
INFO AMEMBASSY LONDON
AMEMBASSY PARIS
USMISSION USBERLIN IMMEDIATE

C O N F I D E N T I A L SECTION 01 OF 02 BONN 09235

E.O. 11652: GDS
TAGS: PGOV, BQG, AKB, PORS
SUBJECT: REQUEST TO PERMIT ARMING OF PROSECUTORS AND
JUDGES AT LORENZ KIDNAPPING TRIAL IN BERLIN

REF: STATE 120684 AND PREVIOUS (NOTAL)

BEGIN SUMMARY: THE SUBJECT WAS DISCUSSED BY THE ALLIED
BONN GROUP REPS ON MAY 12 AND MAY 19. THE BRITISH
AND US BONN GROUP REPS ARE IN FUNDAMENTAL AGREEMENT
THAT THE JUDGES AND PROSECUTORS SHOULD BE ALLOWED TO
CARRY WEAPONS IN BERLIN, ALTHOUGH THE UK REP SUGGESTED
THAT THEY SHOULD BE REQUIRED TO BECOME "TEMPORARY
POLICE," A SUGGESTION WHICH WE CONSIDER UNNECESSARY AND
ILLOGICAL. ON MAY 12, THE FRENCH BONN GROUP REP SAID
HE HAD NO FUNDAMENTAL OBJECTION TO THE PROPOSAL IF A
WAY COULD BE FOUND BUT RESERVED HIS POSITION. AFTER
CONSULTATION WITH HIS EMBASSY AND THE FRENCH MISSION
IN BERLIN, THE FRENCH REP INFORMED US MAY 19 THAT THE
QUESTION IS BEING REFERRED TO THE QUAI FOR DECISION BUT
THAT THE LOCAL RECOMMENDATION IS A NEGATIVE ONE. IN
ACCORD WITH THE DEPARTMENT'S VIEWS IN REF A, WE RECOM-
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MEND THAT ASSISTANT SECRETARY VEST SEEK TO DISCUSS
THE MATTER TRIPARTITELY WITH UK POLITICAL DIRECTOR
HIBBERT AND FRENCH DIRECTOR FOR EUROPEAN AFFAIRS ANDREANI
DURING THE WASHINGTON MEETING. ACTION
REQUESTED: SEE PARAGRAPH 7.

1. AT A MAY 12 MEETING OF THE ALLIED BONN GROUP REPS

ON THE SUBJECT, THE US REP SUGGESTED THAT WE RECOMMEND THAT THE ALLIES IN BERLIN PERMIT THE SMALL NUMBER OF JUDGES AND PROSECUTORS INVOLVED IN THE LORENZ TRIAL TO CARRY ARMS. HE SAID THAT ALLIED ORDER NO. 2 (NOT ALLIED LAW NO. 2, WHICH DEALS WITH DE-NAZIFICATION) APPEARED TO PERMIT THIS, WITH ITS REFERENCE TO "ALL TYPES OF FIREARMS ISSUED TO THE CIVIL POLICE AND LOCAL AUTHORITIES." HE SAID HE REALIZED THAT THERE WERE PRACTICAL PROBLEMS INVOLVED SINCE OTHER PERSONS MIGHT WISH TO CARRY ARMS BUT THAT THE ALLIES, IN THE EXERCISE OF SUPREME AUTHORITY IN BERLIN, COULD REFUSE THIS EITHER ON THE GROUND THAT THEY WERE NOT "AUTHORITIES" AND THEREFORE NOT COVERED BY ALLIED ORDER NO. 2 OR BY A SIMPLE FINDING, IF THE APPLICANTS WERE "AUTHORITIES," THAT THE DANGER THEY FACED WAS NOT ADEQUATE TO PERMIT SUCH CARRIAGE OF GUNS. IN SHORT, HE SUGGESTED THERE WAS NO NEED TO DEVELOP A DETAILED LIST OF CRITERIA.

2. THE UK REP (EYERS), SAID THAT HE HAD REQUESTED INSTRUCTIONS, WHICH HE HAD NOT YET RECEIVED, BUT THAT HE HAD RECOMMENDED A LINE SIMILAR TO THE ONE THE US REP SUGGESTED. HE SAID THAT HE WAS STRUCK BY THE FACT THAT THE ALLIES ALLOW SPORTSMEN, SHOOTING CLUBS, ETC. TO HAVE WEAPONS AND THAT WE WOULD LOOK "BLOODY SILLY" IN THE LIGHT OF THIS IF SOMETHING CONFIDENTIAL

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HAPPENED TO ONE OF THE JUDGES OR PROSECUTORS, WHOM WE HAD NOT PERMITTED TO CARRY ARMS. AS TO HOW WE MIGHT ACCOMPLISH THIS GOAL, HE SAID THAT WE SHOULD MAKE THE JUDGES AND PROSECUTORS "TEMPORARY POLICE" AND ISSUE THEM POLICE WEAPONS. THIS WOULD, OF COURSE, REQUIRE A CHANGE IN THE POLICE REGULATIONS, WHICH THE GERMANS WOULD NOT LIKE BECAUSE OF "RECHTSEINHEIT" (LEGAL UNITY BETWEEN BERLIN AND THE FRG) BUT IF THE FRG INSISTED ON THE PROPOSAL THAT ARMS BE ISSUED, THEY SHOULD BE PREPARED TO PAY A PRICE. HE ADMITTED THAT THIS MIGHT NOT BE AN APPROPRIATE SUGGESTION, AT LEAST IN THE CASE OF JUDGES.

3. IN RESPONSE TO A QUESTION BY THE US REP, EYERS SAID HE THOUGHT THAT ALLIED ORDER NO. 2 IS "A BIT THIN" AND THAT THE ORDER, BY REFERRING TO "LOCAL AUTHORITIES", MEANT TO INCLUDE CUSTOMS OFFICIALS, ETC. WHO ARE DIRECTLY CONNECTED WITH PUBLIC ORDER. THE US REP RESPONDED THAT THE POINT IS THAT ALLIED ORDER NO. 2 DOES NOT, BY ITS TERMS, EXCLUDE THE POSSIBILITY OF ISSUING WEAPONS TO JUDGES AND PROSECUTORS. THE MEANING OF "LOCAL AUTHORITIES" IS AMBIGUOUS AT WORST AND,

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 09235

SINCE THE ALLIES ARE PRESUMABLY FREE TO INTERPRET THE
AMBIGUITY IN THIS CASE, WE SHOULD NOT RESOLVE THE
AMBIGUITY MORE RESTRICTIVELY THAN DESIRED. IT WOULD
NOT APPEAR LOGICAL TO REQUIRE THE JUDGES AND PROSECUTORS
TO BECOME "TEMPORARY POLICE" SINCE, UNLIKE THE PROPOSAL
FOR PERMITTING PRIVATE BODYGUARDS TO CARRY WEAPONS,
"LOCAL AUTHORITIES" CAN CARRY GUNS.

4. THE FRENCH REP (RICHARD) SAID THAT THE QUESTION OF
POLITICAL OPPORTUNITY SHOULD BE CONSIDERED AND WE
SHOULD CAREFULLY AVOID BREACHING QUADRIPARTITE LEGIS-
LATION. HE SAID THERE IS SOME QUESTION WHETHER THE
SENAT IS FULLY BEHIND THIS PROPOSAL AND THAT MAYOR
STOBBE, TO HIS KNOWLEDGE, HAD NOT BEEN HEARD TO SUPPORT
IT. IN ADDITION, THERE ARE "LAWYERS" IN BERLIN
WHO WILL SEE THIS AS A SUCCESS IN THEIR ATTEMPTS TO
HAVE ALLIED LAW UPDATED. THE FOREGOING NOTWITHSTANDING,
RICHARD SAID HE PERSONALLY HAD NO "FUNDAMENTAL OBJECTION"
TO THE PROPOSAL TO ALLOW JUDGES AND PROSECUTORS
TO CARRY ARMS IF A WAY CAN BE FOUND. THIS SHOULD,
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HOWEVER, BE KEPT AS CONFIDENTIAL AS POSSIBLE. HE SAID HE COULD NOT AGREE TO RECOMMEND THE PROPOSAL HOWEVER, PRIOR TO CONSULTATION WITHIN HIS EMBASSY AND WITH THE FRENCH MISSION IN BERLIN.

5. ON MAY 19, RICHARD SAID THAT AFTER FURTHER CONSIDERATION, HIS EMBASSY IS ASKING FOR INSTRUCTIONS BUT THE FRENCH MOOD HERE IS NOT FAVORABLE. HE SAID THE EMBASSY IS RECOMMENDING TO THE QUAI THAT THE PROPOSAL NOT BE APPROVED FOR THE FOLLOWING REASONS:

A) THERE IS NO VALUE, FROM A PRACTICAL POINT OF VIEW, IN PERMITTING JUDGES AND PROSECUTORS TO CARRY ARMS. THE EXPERTS AGREE THAT THEIR SECURITY WILL NOT BE ENHANCED AND THE ONLY BENEFIT WILL BE A PSYCHOLOGICAL ONE.

B) IT WILL BE A CHANGE IN THE LONG-STANDING PRACTICE IN BERLIN.

C) IT WILL BE A BAD PRECEDENT AND THE ALLIES WILL BE UNDER PRESSURE TO PERMIT OTHERS TO CARRY ARMS IN BERLIN.

D) IT IS POLITICALLY UNWISE (COMMENT: PRESUMABLY IN PART BECAUSE IT WOULD REACT TO THE FRG AND SENAT PRESSURE AND THE PUBLICITY GIVEN THIS MATTER) TO CHANGE OUR PRACTICE. THE FRENCH EMBASSY RECOGNIZES UNFAVORABLE PUBLICITY WILL FOLLOW IF SOMETHING HAPPENS TO A JUDGE OR PROSECUTOR AND THE ALLIES ARE CRITICIZED FOR NOT HAVING PERMITTED THEM TO CARRY ARMS. HOWEVER, HE SAID THAT WE CAN DEFEND OUR ACTION ON THE BASIS OF ALLIED LAW, LONG-STANDING PRACTICE AND THE FACT THAT PERSONAL CARRIAGE

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OR ARMS DOES NOT ENHANCE SECURITY.

6. WE REVIEWED THE COUNTER ARGUMENTS WITH RICHARD BUT THE FRENCH HERE ARE FIRM. WE EXPRESSED APPRECIATION FOR HIS CLEAR EXPOSITION OF THE FRENCH REASONING AND SAID THAT IT WOULD PROVIDE A USEFUL BASIS FOR DISCUSSION IN CASE THE DEPARTMENT WISHES TO RAISE THE QUESTION AT THE WASHINGTON MEETING. THE ALLIED REPS AGREED THAT IF THE MATTER IS TO BE RAISED, IT SHOULD BEST BE DONE WITH ANDREANI AND HIBBERT BUT OUTSIDE THE PRESENCE OF THE FRG REPRESENTATIVE SINCE THIS IS AT PRESENT A PURELY ALLIED MATTER. RICHARD AND EYERS ASKED THAT WE

INFORM THEM IF THE DEPARTMENT PLANS TO RAISE THE QUESTION
IN ORDER THAT THEY CAN ALERT THEIR REPRESENTATIVES.

7. COMMENT: IT APPEARS TO US THAT IF THE MATTER IS
TO BE RESOLVED IN THE MANNER THE US WANTS, THIS MUST BE
DONE AT A HIGHER LEVEL THAN IN THE BONN GROUP OR AMONG
THE MISSIONS IN BERLIN. THE DEPARTMENT'S SUGGESTION
THAT THE SUBJECT MIGHT BE DISCUSSED AT THE WASHINGTON
MEETING IS AN EXCELLENT ONE. WE RECOMMEND THAT IT BE
DISCUSSED TRIPARTITELY AMONG ASSISTANT SECRETARY VEST,
HIBBERT AND ANDREANI IF AT ALL POSSIBLE. PLEASE ADVISE
US OF THE DEPARTMENT'S INTENTIONS.

8. ACTION REQUESTED: SEE PARAGRAPH 7.
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